

United States Senate

WASHINGTON, DC 20510

August 21, 2018

The Honorable Karen Dunn Kelley
Under Secretary for Economic Affairs
U.S. Department of Commerce
101 Constitution Avenue, NW
Washington, DC 20230

Dear Under Secretary Kelley:

We are writing to seek more information about your role and actions regarding the inclusion of a citizenship question on the 2020 Census. Last month, due to a federal lawsuit, the Department of Commerce (“Commerce”) produced several documents revealing gaping inconsistencies between Secretary Wilbur Ross’ testimony to Congress and the actual course of events that led to the decision to include the question. These discrepancies are deeply troubling, and additional information will be helpful towards understanding your role in the decision to add the citizenship question.

You arrived at Commerce well before the decision to add the citizenship question was finalized in March 2018. In August 2017 you began your role as Under Secretary for Economic Affairs, leading the Economics and Statistics Administration (“ESA”) and overseeing the Department of Commerce’s statistical programs, including the U.S. Census Bureau.¹ In addition to your duties as Under Secretary, in November 2017 you became Secretary Ross’ second-in-command as Acting Deputy Secretary of Commerce.² On June 4, 2018, you were officially nominated to the position of Deputy Secretary of Commerce.³

This entire year Secretary Ross has maintained it was a request from the Department of Justice (“DOJ”) that prompted the inclusion of the citizenship question. When asked during a March 20, 2018, House Appropriations Committee hearing whether anyone else had directed him to add such a question, Secretary Ross stated “We are responding solely to [DOJ’s] request.”⁴ Two days later in sworn testimony at a House Ways and Means Committee hearing, Secretary Ross stated the “[DOJ], as you know, initiated the request for inclusion of the citizenship question....Because

¹ U.S. Department of Commerce, *Karen Dunn Kelley, Under Secretary for Economic Affairs, performing the nonexclusive duties of the Deputy Secretary of Commerce*, (Sept. 22, 2017), <https://www.commerce.gov/directory/karendunnkelley>.

² Scott Nicholas, *Karen Dunn Kelley to Assume ‘Nonexclusive’ Commerce Deputy Secretary Responsibilities*, *ExecutiveGov*, (Nov. 30, 2017), <http://www.executivegov.com/2017/11/karen-dunn-kelley-to-assume-nonexclusive-commerce-deputy-secretary-responsibilities/>.

³ PN2049 — Karen Dunn Kelley — Department of Commerce, <https://www.congress.gov/nomination/115th-congress/2049?q=%7B%22search%22%3A%5B%22karen+dunn+kelley%22%5D%7D&r=1>.

⁴ Wilbur Ross, “Testimony on FY19 budget request for the Department of Commerce before the House Appropriations Subcommittee on Commerce, Justice, Science,” (March 20, 2018), <https://www.youtube.com/watch?v=NDWiAiSWgNU&feature=youtu.be&t=36m25s>.

it is from the [DOJ], we are taking it very seriously, and we will issue a fulsome documentation of whatever conclusion we finally come to.”

A few days later, in a March 26, 2018, memorandum addressed to you, Secretary Ross announced the inclusion of a citizenship question on the 2020 Census, citing the need “to provide complete and accurate data in response to the [DOJ] request”.⁵ In his memo to you Secretary Ross states, matter-of-factly (“Dear Under Secretary Kelley, As you know...”), that the citizenship question was initiated by a December 12, 2017, DOJ request for census block level citizenship voting age population data to be used for DOJ enforcement of the Voting Rights Act. Secretary Ross later repeated this justification at a May 10, 2018, Senate Appropriations Committee hearing. When Senator Leahy asked him “Why this sudden interest [in the citizenship question] when the department that’s supposed to enforce violations doesn’t see any problems?” Ross testified “Well, the Justice Department is the one who made the request of us.”⁶

None of this appears to be true. The documents released by the Department of Commerce in late July indicate the citizenship question was considered as early as March 2017—some nine months before the date Secretary Ross provided in his testimony.⁷ Rather than DOJ “initiat[ing] the request for inclusion of the citizenship question”, the documents show the request was, in fact, brought to DOJ officials by Secretary Ross and other staff at the Department of Commerce.⁸ This outreach to DOJ was prompted by political operatives in and around the administration with a partisan agenda for the 2020 Census, in an apparent effort to create a public record that met at least one of the Census Bureau’s criteria for collecting data in the census or American Community Survey.⁹ For months Secretary Ross, under oath, repeatedly presented a sequence of events that simply did not occur. Only recently, weeks after the litigation forced Commerce to produce compromising documents challenging his timeline, did Secretary Ross acknowledge his sequence was entirely backwards.¹⁰

For the last 12 months you have worked closely with Secretary Ross. As a top official, you have overseen the work at Commerce and the U.S. Census Bureau while the agencies developed and added the citizenship question. Indeed, documents show that you assisted Secretary Ross in the development of the citizenship question across multiple stages, including: the evaluation of various wording options; participation in meetings with stakeholders; and the development of

⁵ Letter from Wilbur Ross, Secretary, Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs, (March 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.

⁶ Sam Adler-Bell, *Trump Officials’ Unraveling Justification for the Census Citizenship Question*, *The Century Foundation*, (July 26, 2018), <https://tcf.org/content/commentary/trump-officials-unraveling-justification-for-the-census-citizenship-question/?session=1>.

⁷ Email from Earl Comstock, Director, Office Of Policy And Strategic Planning, U.S. Department of Commerce, to Wilbur Ross, Secretary, U.S. Department of Commerce, (May 2, 2017), at <http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip> (Document 3710).

⁸ Tara Bahrapour, *Wilbur Ross actively pushed to add citizenship question to 2020 Census, documents show*, *Washington Post*, (July 24, 2018), https://www.washingtonpost.com/local/social-issues/wilbur-ross-actively-pushed-to-add-citizenship-question-to-2020-census-documents-show/2018/07/24/5601b3b6-8f65-11e8-bcd5-9d911c784c38_story.html?utm_term=.79aa599bfc94.

⁹ Dale Ho, *The Trump Administration’s Census Cover Up*, *American Civil Liberties Union (“ACLU”)*, (July 27, 2018), <https://www.aclu.org/blog/voting-rights/trump-administrations-census-cover>.

¹⁰ On June 21, 2018, Secretary Ross filed a Supplemental Memorandum with the court stating that he began considering adding a citizenship question “soon after” he was confirmed as Commerce Secretary in February 2017.

draft policy.¹¹ Given your proximity to Secretary Ross and your leadership role, I would like to know when you became aware of the true dynamics between Commerce and DOJ regarding the citizenship question.

To be sure, during your July 26, 2017, confirmation hearing before the Senate Commerce Committee you acknowledged that the mission of the ESA, the Bureau of Economic Analysis, and the U.S. Census is to “serve as the leading source of quality data about the nation’s people and economy” and stated that you “know how to serve that mandate by putting the people, process and procedures in place to create an accurate product.”¹² You also described the work required for “a high quality 2020 Census” as your “highest priority” and committed no fewer than three times during the hearing to “count every individual.”¹³ Finally, and most importantly, you specifically committed to resist political pressure from the administration or elsewhere to compromise the integrity of the department’s data and economic analysis.¹⁴

However, the documents released last month indicate that, under your leadership, Commerce decided to add a citizenship question that will cost taxpayers at least an additional \$27.5 million.¹⁵ A host of experts—including six former Census Bureau directors—have warned Commerce the citizenship question will depress the responsiveness of the general public, and lower the quality of data collected.¹⁶ Indeed, in January 2018 the Census Bureau’s Chief Scientist advised you and other senior staff that the citizenship question would bring about “major potential quality and cost disruptions” for the 2020 Census.¹⁷ He also recommended less costly and less disruptive alternatives for using Census data to shore up DOJ’s Voting Rights Act enforcement.¹⁸ All of those options were ignored in favor of adding the citizenship question; and the documents establish this decision was largely political.

To fully understand your decision-making process and your role in the development of this policy, we ask that you provide the following information no later than September 4, 2018:

- 1) A complete description of any role you may have had in Commerce or Census Bureau recommendations, decisions, or analyses related to including a citizenship question on the

¹¹ *Commerce Department’s Administrative Record For Census Citizenship Question Lawsuits*, National Public Radio (“NPR”) <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record>, at 1216 and 1289.

¹² Karen Dunn Kelley. “Testimony on Nomination for Under Secretary for Economic Affairs Before the Senate Commerce, Science and Transportation Committee.” (July 26, 2017), https://www.commerce.senate.gov/public/_cache/files/ff19388e-e9a0-4356-8cd2-7e2ea5d8ba5a/A9D4DEAEDCAD293D562F70715FDA4CBB.karen-dunn-kelley-testimony.pdf.

¹³ *Id.*

¹⁴ The exact question from Senator Schatz was: “Do you commit to resisting any pressure from the administration or elsewhere to compromise the integrity of the Department’s data and economic analysis through reorganization, insufficient funding, or political pressure?”

¹⁵ *Supra* note 11, at 1289.

¹⁶ Letter from Vincent P. Barabba et al., to Wilbur Ross, Secretary, Department of Commerce, (2018), *available at* https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf.

¹⁷ *Supra* note 11, at 1290.

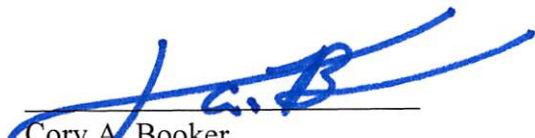
¹⁸ *Supra* note 11, at 1279-1285.

2020 Census. Please include a list of the meetings you attended related to these topics, and the attendees of these meetings.

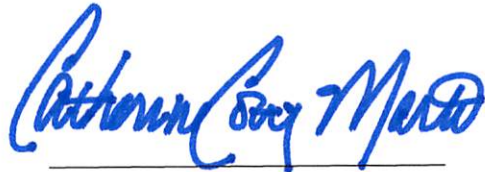
- 2) All emails and other documents related to your communications with Commerce, ESA, Census Bureau, DHS, or DOJ officials regarding the development and implementation of the policy.
- 3) Any final or draft recommendations, responses to questions the Secretary or anyone else in the Commerce Department posed to Census Bureau staff, letters to members of Congress, or talking points related to the policy, and any correspondences related to the drafts.
- 4) All emails relating to your involvement with the citizenship question, including management and cost assessment reviews.

Thank you, and we look forward to your response.


Sincerely,



Cory A. Booker
United States Senator



Catherine Cortez Masto
United States Senator



Brian Schatz
United States Senator



Robert Menendez
United States Senator



Mazie Hirono
United States Senator